IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.6371 OF 2006

Rajaram Maruti Dinde & ors. : Petitioners.

versus

Sudhakar Rajaram Kulkarni

and others. : Respondents.

Mr.N.V.Bandiwadekar for the petitioners.

Mr.C.G.Gavnekar for the respondents.

CORAM : D.G.DESHPANDE

DATED : JANUARY 12, 2007.

P.C.

1. The petitioners are the original defendants. A suit of 1971 came to be decreed in 1982 and, according to the petitioners, who are the defendants, they challenged it subsequently and, thereafter when they received execution notice, they filed appeal and also application for condonation of delay contending therein that their advocate Mr.R.S.Joshi died in 1982, they

were not aware of pendency of suit and, therefore, the suit proceeded exparte. Then the District Judge, Kolhapur passed an order on 1.11.1993. That order was challenged in Civil Revision Application and, in view of the amendment, the petitioners were granted liberty to file writ petition and, therefore, this writ petition.

2. Learned advocate for the petitioners states that order at Exhibit E, that is the impugned order of dismissal of appeal, is not based on facts. Whatever that may be, the basic contention of the petitioners that they were not aware of the proceedings from 1982 to 1988 is totally false and bogus. If the petitioners are negligent in not contacting their lawyer for six years, particularly when they were showing their diligence in contesting other matters pending before the Revenue Authorities, then their application for condonation of delay was liable to be rejected on merits. However, I am not entering into merits of that application for condonation of delay. In the impugned order (Exhibit E) the District Judge has noted that "Both the parties advocate absent since long back

and today also. No steps taken by the applicant. It seems that the applicant is not interested in the Appeal to proceed further. Hence the Appeal is dismissed with no order as to costs."

3. The conduct of the petitioners is totally of negligence and recklessness. They say that for six years they did not know about the proceedings, their advocate died in 1982 and then filed appeal in 1989. The Court found that the appellant was totally negligent and, therefore, in the circumstances, the District Judge was fully justified in dismissing the appeal. No interference is called for. Hence the petition is dismissed.

[D.G.DESHPANDE,J]